considerable period prohibited land transfers and thus the plaintiffs were prevented from completing their part of the transaction within a reasonable time. Their case is that the contract was frustrated and that they are entitled to relief all the more so as by exhibits P-5, P-6 and P-7 the defendant had repudiated the contract.

I must now consider if it was impossible for the plaintiffs to perform their part of the contract within a reasonable time. I do not propose to place a scientifically exact meaning on the word impossibility in applying it in the circumstances of this case. The American Law Institute has defined impossibility as follows :—

> Impossibility means not only strict impossibility but impracticability because of extreme and unreasonable difficulty, expense, injury or loss involved.

This definition has, I believe, been generally accepted by British Courts and is cited by *Webber* in his great book "The Effects of War on Contracts" at page 453. I propose to apply it in this case.

I accept the plaintiffs' evidence in this connection and in the circumstances in which I am satisfied they were placed I am of opinion that it is the only reasonable conclusion to come to that it became impossible for them to perform their part of the contract.

Having come to the above conclusion it seems clear that I must now apply the doctrine of frustration. Further, it is evident that the parties, far from making full provision for the state of affairs which arose, do not appear even to have contemplated the possibility.

Mr. Hume has referred to the "Coronation Seat Cases", but the doctrine of frustration has developed so considerably since those cases that they must be regarded as being out of date. I look to the *Fibrosa* case[1] to find the solution to the present case. That case laid down the principle that if money has been paid in advance under a contract which becomes frustrated, and the payer has received nothing in return, the consideration has totally failed and he is entitled to his money back.

To recapitulate therefore, I find in this case as follows : — (a) that time was not the essence of the contract; (b) that it became impossible for the plaintiffs to perform their part of the contract within a reasonable time; (c) that no provision was agreed on by the parties for the state of affairs which arose; (d) that the contract was therefore frustrated and that the doctrine of frustration should apply and (e) that plaintiffs paid money in advance and received nothing in return.

I am of opinion that the plaintiffs are entitled to their money back and I accordingly enter judgment for them for the amount of $500.00, with costs.

Judgment for Plaintiffs.

PUBLIC PROSECUTOR v. KOK HENG & 2 ORS.

[J.B. — Crim. Case No. 11/48 (Laville, J.) May 5, 1948]

Penal Code Ss. 392, 397 — Armed robbery — Identification by photograph and further inspection — Form of Warrant of Arrest and procedure to be followed.

The three accused were charged with robbery of $20/- from one Lim Geok Long and of being armed while carrying out the robbery. The identification of the prisoners was carried out by photographs while they were in police custody. The accused were formally arrested on warrants on 30th March and 1st April: each warrant was issued on 15th March and according to the evidence of Mohamed Eusoff, on an information of robbery given by him to the Magistrate, but none of these warrants bore on the body of the warrant any indication of the offence with which the man to be arrested was charged.

Held, (a) That while identification by photograph before arrest is acceptable in law, it has always been held that once a man has been arrested the identification should be by personal inspection. If there is identification by photograph, the identification and method by which it is held must be flawless. (b) It is a misuse of legal powers to issue a warrant bearing the charge typed on a piece of paper attached to the warrant where such annexure is not authenticated by the Magistrate issuing the warrant.

CRIMINAL TRIAL.

W. M. McCall for the Public Prosecutor.

Accused in person.

Laville, J. : — Police act on a hearsay report, maker of which is not called.

Sole evidence is identification by Lim Geok Long, and the whole evidence depends on his word alone; no corroboration of his $20; no corroboration as to revolvers or as to hold up.

Identification by photographs: this in certain circumstances may be reliable, but it is, in my opinion, dangerous, if followed by an identification parade in that it must inevitably tend to identification of the photograph rather than the person. In this case, identification of No. 3 accused cannot be accepted.

Since there was doubt at the only real parade, i.e. that of photos, the second parade of individuals in regard to No. 3 is vitiated by the photographic parade, where there was failure to identify.

While identification by photograph before arrest is acceptable in law, it has always been held that once a man has been arrested the identification should be by personal inspection. If there is identification by photograph, the identification and the method by which it is held must be flawless. In this case both drawbacks to the identification exist.

In the case of the photographic identification, there was a circumstance, whether intentionally introduced or not, which Lim Geok Long might accept as a hint as to which of the three photos he should identify. He is an English-speaking and literate man and can read English. Of the ten photos presented for his inspection, there was one group of three which could be separated from the rest in that they bore the word Segamat and consecutive numbers. There was no other group of three among the ten, and it was three men the witness was seeking to identify. In my view, this is enough to vitiate the identification when the guilt or innocence of the accused rests solely on that.

In the second place, all three of the accused were at the time of identification by photograph in police custody, and their photographs disclose this fact. If the evidence of Inspector Mohamed Eusoff is correct, it was known that the three accused might be the men in this robbery and their photos were handed to the Inspector to show to Lim Geok Long in that connection. There appears to be no reason why a corporeal identification parade was not or could not be held in the ordinary way. I find it strange that this procedure was adopted on this occasion in regard to these three accused.

There is another matter in regard to which attention must be drawn. The three accused were formally arrested on warrants on 30th March and 1st April; each warrant was issued on 15th March, and, according to Inspector Mohamed Eusoff's evidence, on an information of robbery given by him to the Magistrate, yet none of these warrants bear on the body of the warrant any indication of the offence with which the man to be arrested is charged. In each case a typed piece of paper is attached to the warrant bearing the charge. The annexure is not authenticated by the Magistrate and could have been put on by any one at any time. The result is a licence to the police to arrest the men named in the warrants and charge them with any crime. Such a warrant is a misuse of legal powers and should never have been issued in that State by the Magistrate concerned.

I cannot but express my opinion that the investigation and production of this case up to trial has not reached that standard of efficiency which the State has a right to expect from its officers; there is a serious flaw in the identification procedure and a carelessness in regard to the issue of the warrants which it is desirable should not occur again.

The prosecution case depends solely on the uncorroborated evidence of Lim Geok Long and on his sole identification; that identification is open to criticism for the reasons I have set out. I cannot therefore hold that the prosecution have made out a case which would warrant a conviction and make it incumbent on me to put the accused to their defence. I therefore acquit and discharge all three accused.

Accused Acquitted.

YAP HENG MUN v. CHIEW SIANG KWANG.

[App. Civ. Juris. (Callow, J.) May 8, 1948]
[Malacca — Civ. App. No. 1 of 1948]

Landlord and Tenant — Increase of Rent (Restriction) Ordinance 1939 — Control of Rent Ordinance 1948 — Repeal of Ordinance — Effect on Pending Actions — Interpretation and General Clauses Ordinance, 1948.

This is an appeal from the decision of the District Court at Malacca.

The claim was for possession of premises sublet on a monthly tenancy which was duly determined by a legal notice to quit and for arrears of rent and mesne profits.

Proceedings were commenced on the 5th January 1948, and on the 31st January 1948 the Control of Rent Ordinance 1948 which replaced the Increase of Rent (Restriction) Ordinance 1939 came into force. On the 13th February 1948 the case came on for hearing. The question raised on appeal was whether the proceedings in the Court below should be governed by the new Ordinance or the old.

Held, that the new Ordinance did not interfere with the plaintiff's right acquired under the old Ordinance as there were no provisions in the New Ordinance sufficiently plain and clear to remove the presumption that the rights of litigants in proceedings in progress should not be disturbed.

Appeal allowed and case remitted to the Court below with direction that the proceedings be continued and determined in accordance with the provisions of the old Ordinance.

Cases referred to :—

(1) *Basrai Bros. v. Syed Ibrahim bin Omar Alsagoff,* (1948) M.L.J. 63.

(2) *Public Prosecutor v. Annuar bin Ali,* (1948) M.L.J. 38.